Before the
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of Developing a Unified Intercarrier Compensation Regime	)))))	CC Docket No. 01-92

REPLY COMMENTS OF WESTERN WIRELESS CORPORATION AND SUNCOM WIRELESS, INC.

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SUMMARY

The numerous commenters are virtually unanimous in emphasizing both that intercarrier compensation reform is one of the most important decisions facing the Commission at this time, and that decisive action to eliminate existing compensation biases and irrational pricing schemes is fully warranted. The current broken intercarrier compensation system severely inhibits the ability of telecommunications carriers to obtain investment, deploy new technology, and deliver additional consumer value. The Commission should quickly abolish existing distinctions based on technology, political boundaries, and obsolete network architectures, and adopt new rules that anticipate and facilitate changing technologies and services. Carriers should be encouraged to become self-reliant, and to deploy their network in the most economically efficient manner to serve their own customers. The commenters generally agree that the Commission's decisions in this proceeding are of critical importance to the future of the telecommunications industry, and the comprehensive reform plan offered by Independent Wireless Carriers best achieves all of these concerns. Independent Wireless Carriers is interested in focusing on areas of compromise and consensus that can inform the Commission's decisions in this proceeding, and the fact that numerous commenters appear to support the principles articulated by Independent Wireless Carriers advances that objective.

Independent Wireless Carriers' plan is comprised of several cornerstone principles, significant portions of which are supported by commenting parties. The Commission should adopt a plan that results in a bill-and-keep regime, absent extraordinary circumstances, after a four-year transition period. If the Commission elects to retain any form of monetary compensation, Independent Wireless Carriers propose that the "additional cost" standard not be based on TELRIC (which includes common costs and other non-traffic-sensitive components), but strictly on an analysis of incremental traffic-sensitive switching and transport costs.

With regard to the physical interconnection of networks, Independent Wireless Carriers urge the Commission to retain the "single point of interconnection" ("POI") rule found in the Commission's current rules. Because there is no universal optimal geographic area for all carriers, the LATA is the most suitable geographic point to utilize as a limit for the originating carrier's obligation to deliver traffic to a terminating carrier. Using a common efficient aggregation point—*i.e.*, a designated LATA tandem—as a default mechanism will reduce costs both for carriers operating in rural areas and for small carriers (including new market entrants) with low traffic volumes, as it utilizes more efficient shared facilities for purposes of traffic exchange.

As do other commenters, Independent Wireless Carriers urge the Commission to require all incumbent LECs to continue to provide transit services at regulated rates. The Commission's intercarrier compensation reform efforts must include the elimination of rate-of-return regulation, which improperly serves only to incent local exchange carriers to maximize support by incurring or reporting more costs results in inefficiency and waste.

Consistent with the recommendation made by Independent Wireless Carriers and numerous other commenters, the Commission should affirm that separate rating and routing for local numbers is fully consistent with the Commission's rules and principles of local competition, state commission decisions, and court decisions. It is imperative that a local competitor be able to obtain telephone numbers local to the area where it wishes to compete, and anticompetitive ILEC practices seeking to restrict such access must be prohibited.

In addition, as the Commission develops a reformed intercarrier compensation regime, it should simultaneously act to overhaul existing high-cost universal service policy in order to produce a consistent, logical, and unified system for all carriers serving similarly situated areas.

Establishment of a competitively neutral system of high-cost support based on forward-looking economic cost is long overdue. Numerous other commenters amply support Independent Wireless Carriers' position that the Commission must reject ILEC attempts to guarantee revenue neutrality in the context of access charge reductions, and to treat different types of carriers in a disparate manner based on outmoded historical distinctions. In contrast, Independent Wireless Carriers' plan offers both intercarrier compensation and universal service reforms that are premised on core principles, rooted in the public interest, of economic efficiency and consumer welfare. The adoption of Independent Wireless Carriers' plan would achieve several critical objectives, in that it would establish a competitively and technologically neutral regulatory backdrop to emerging intermodal competition; would promote the interests of consumers; and would target support so as to avoid undue fund growth.

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Western Wireless Corporation ("Western Wireless") and SunCom Wireless, Inc. ("SunCom") (jointly referred to herein as "Independent Wireless Carriers" or "IWC") submit these reply comments in response to the Commission's *Further Notice of Proposed Rulemaking*.[1] Independent Wireless Carriers propose that the FCC adopt a simple and straightforward plan to address the many interrelated issues that are before the Commission in this proceeding. Independent Wireless Carriers' comprehensive plan was attached to its initial comments, and the details of the plan are fully described therein. In these reply comments, IWC will briefly focus on the key elements of its plan and address the positions expressed by other commenters, which demonstrate both that critical aspects of the proposal are supported by other carriers and that IWC' plan is the most workable proposal before the Commission.

I. INTRODUCTION

As IWC explained at length in its comments, intercarrier compensation reform will serve the public interest by promoting economic efficiency, competition, and technological innovation, while protecting the availability of universal service.[2] IWC's comprehensive reform plan

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[1] Developing a Unified Intercarrier Compensation Regime, *Further Notice of Proposed Rulemaking*, CC Docket No. 01-92, FCC 03-55 (released March 3, 2005) ("*Further Notice*").

[2] IWC Comments at 1-2.

addresses all of these issues, and various commenters have expressed views that are consistent with IWC's proposal. In particular, commenting parties have taken positions that are consistent with that of IWC regarding bill-and-keep,[3] retention of the "single point of interconnection" rule,[4] transit issues[5] and reformation of universal service.[6] In fact, aspects of the IWC proposal have been either specifically endorsed or cited favorably by CTIA,[7] Nextel,[8] Time Warner,[9] and United States Cellular Corp.[10]

IWC similarly supports certain aspects of the proposals advanced by many other commenters, and urges the Commission to realize that there are numerous areas of compromise and consensus than can inform its resolution of these critical issues. In particular, IWC agrees with many of the concerns expressed by the commenting CMRS carriers, which point out the particular challenges faced by this class of carriers. However, IWC is not in agreement with all aspects of the plans advocated by carriers whose proposals are heavily weighted toward wireline interests, and with those carriers who do not support a bill-and-keep regime.

As IWC noted in its comments, the Commission should not consider itself bound to accept one plan on a take-it-or-leave-it basis, despite the demands of supporters of a plan.

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[3] *See* CTIA Comments at 17-18; Leap Wireless Comments at 5; Nextel Partners Comments at 4; Time Warner Comments at 8; United States Cellular Corp. Comments at 5; Wiltel Comments at 14.

[4] *See* Dobson Cellular System Comments at 2-3.

[5] *See* Cox Comments at 14; United States Cellular Corp. Comments at 5.

[6] *See* CTIA Comments at 53 (endorsing the IWC approach to universal service reform).

[7] *See* CTIA Comments at 53.

[8] *See* Nextel Partners Comments at 22.

[9] *See* Time Warner Comments at 9.

[10] *See* United States Cellular Corp. Comments at 10.

Instead, the Commission's duty is to prescribe rules that promote the public interest, not the interests of a particular group of carriers. Industry negotiations only represent the interests of those participating in the negotiations, not the industry as a whole and certainly not the interests of consumers. Plans and plan elements that dwell on "carve out treatments" and complexity should be avoided. Instead, the Commission should adopt a plan that makes sense as a coherent whole, even if it incorporates elements initially proposed by different groups.[11] Although IWC strongly believes that its proposal is the most appropriate and workable plan that has been submitted for consideration in this proceeding, IWC recognizes that it may be necessary for the Commission to combine various aspects of different proposals in order to achieve the most desirable result in carrying out its mandate. IWC is willing to work with the Commission and other parties to reach this objective.

II. THE COMMISSION SHOULD ADOPT A BILL-AND-KEEP REGIME AS PROPOSED BY INDEPENDENT WIRELESS CARRIERS

As detailed in its comments, IWC proposes that the FCC adopt a simple plan to address intercarrier compensation during the period of transition to ultimate bill-and-keep for all wholesale carrier relationships and for all traffic that is transported and terminated.[12] IWC submits that, based on the companies' own experience, their plan is the most workable interim compromise for the entire industry. Adoption of a bill-and keep regime pursuant to the principles advanced by IWC is generally supported in the positions taken by several commenters, including United States Cellular Corp., Wiltel, Nextel Partners, Corr Wireless, Dobson Cellular

[11] United States Cellular Comments at 9.

[12] The IWC plan provides for a limited exception to the bill-and-keep regime, which would not apply where traffic is materially and significantly out of balance. *See* IWC Plan at 11-12. This limitation is supported by other commenters, including NCTA. *See* NCTA Comments at 7.

Systems, Leap Wireless, and CTIA. The fact that so many industry participants support a bill-and-keep regime strongly weighs in favor of Commission adoption of bill-and-keep.[13] Although IWC disagrees with certain aspects of some parties' comments regarding the implementation of a bill-and-keep regime,[14] there is widespread support for such an intercarrier compensation system.

As noted by the various commenters who propose adoption of a bill-and-keep regime, the Commission plainly has authority to implement such an approach.[15] The pricing rules and "additional cost" standard of Section 252(d)(2) permit the Commission and/or state commissions to require bill-and-keep, Section 201 authorizes the FCC to prescribe rules that govern state commissions in arbitrating intercarrier compensation agreements, and Section 332 provides an additional source of authority regarding interconnection with wireless carriers.

To the extent that the Commission continues to require some payment of compensation, however, the "additional cost" standard should not be based on TELRIC (which includes common costs and other non-traffic-sensitive components), but strictly on an analysis of incremental traffic-sensitive switching and transport costs. The Commission noted in the *Further Notice* that the "additional cost" standard is not the same as the statutory pricing standard for unbundled network elements ("UNEs") set forth in the Act,[16] and also acknowledged that

[13] Because it strongly supports adoption of a bill-and-keep regime, IWC disagrees with those commenters, such as CBICC and ARIC, who propose cost-based compensation. IWC similarly disagrees with the position taken by BellSouth, which argues that market forces will direct when the time is appropriate for adoption of bill-and-keep. In fact, the IWC reform plan eliminates constraints on the market that, today, impose compensation rules where none should exist. Intercarrier traffic exchange markets that have "grown-up" largely unfettered by regulation (such as the ISP and CMRS markets) are good demonstrations of how market forces will act to resolve intercarrier compensation issues.

[14] For example, Leap Wireless advocates a shorter transition period than is suggested by IWC and Sprint supports the ICF proposal, which IWC does not endorse.

[15] *See* CTIA Comments at 20; United States Cellular Comments at 8-9.

[16] *Further Notice*, ¶ 71.

TELRIC pricing is not necessarily consistent with the "additional cost" standard.[17] This is because TELRIC measures the *average* cost of providing a function, a standard which may differ from calculating the *additional* cost of providing that function.[18] Independent Wireless Carriers agree with this reasoning, as adoption of TELRIC pricing would result in the inclusion of common costs and other non-traffic sensitive components that are incidental to any additional cost being evaluated by the Commission.

As noted by several commenters, a bill-and-keep regime is superior to the other proposals before the Commission because adoption of such a scheme will result in multiple efficiencies. These include a reduced need for regulatory oversight, and minimization of complex billing arrangements, tracking and collection systems.[19] A bill-and-keep regime should therefore be adopted by the Commission in accordance with the proposals made by IWC.

III. THE COMMISSION SHOULD ADOPT THE INDEPENDENT WIRELESS CARRIER'S APPROACH TO NETWORK INTERCONNECTION ISSUES

With regard to network interconnection, IWC urges the Commission to retain the "single point of interconnection" ("POI") rule embodied in the Commission's current rules. This standard, which is essential to prevent unnecessary and uneconomic duplication of existing networks, is consistent with the position expressed by numerous commenters.[20] If new entrants had to connect to every network node, or even to every tandem switch operated by existing carriers, then the Commission would force inefficient investment in duplicative facilities that would essentially replicate the existing ILEC network. This would in turn create unnecessary

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[17] *Further Notice*, ¶ 71.

[18] *Further Notice*, ¶ 71 (emphasis in original).

[19] *See* CTIA Comments at 17-18; Leap Wireless Comments at 7-9; Nextel Partners Comments at 4.

[20] *See* Dobson Cellular System Comments at 4; Nextel Partners Comments at 31.

barriers to entry. For these reasons, the proposals by ILECs to require competitive entrants to establish a POI in each local calling area or pay the transport costs to reach a POI outside the local calling area[21] should not be adopted and IWC disagrees with those commenters, including Verizon, who claim that the single POI per LATA rule results in ILEC subsidization of its competitors.[22]

The adoption of a default edge definition is another critical aspect of IWC's plan, which is premised on the fact that the originating carrier is technically and financially responsible for delivering traffic to the terminating carrier within a defined geographic area. Because there is no universal optimal geographic area for all carriers, the LATA is the most suitable geographic point to utilize as a limit for the originating carrier's obligation to deliver traffic to a terminating carrier. Unless there is mutual agreement between originating and terminating carriers to establish alternative traffic exchange arrangements, IWC's proposal specifies that the LATA tandem should be designated as the default point of interconnection for all carriers. IWC's proposal is supported by Nextel Partners, which notes that adoption of a one network edge per LATA will ensure that originating LECs are not required to assume responsibility for unreasonable levels of transport on local calls.[23]

Because charges for transport from a POI to the point of "termination" of a call are inherently subject to manipulation based on the location of a carrier's switches, IWC urges the Commission to prohibit such charges. A call does not "terminate" at the end user's premises, but rather at the end office-equivalent switch that serves the end user. Since carrier network

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[21] *See Further Notice*, ¶¶ 90.

[22] *See* Verizon Comments at 30-31.

[23] Nextel Partners Comments at 22. ICW disagrees of that aspect of CTIA's proposal that would apparently permit more than one network edge per LATA, *See* CTIA Comments at 22.

switching design varies significantly, a carrier can put this switch anywhere, and it can increase or decrease its transport charges at will. The ability to engage in such manipulation is contrary to the Commission's objectives in reforming the intercarrier compensation regime.

IV. THE COMMISSION SHOULD FOLLOW THE COST RECOVERY PRINCIPLES ARTICULATED BY THE INDEPENDENT WIRELESS CARRIERS

The IWC plan urges the Commission to simplify intercarrier compensation rules by eliminating historical and, increasingly meaningless, traffic distinctions. IWC's request for removal of such artificial distinctions based on inter/intraLATA, inter/intrastate, local/toll, and various carrier classifications are supported by numerous commenters.[24]

In addition, the IWC's proposal recognizes implementation of a bill-and-keep regime may eliminate a source of revenue for some carriers. To the extent that a carrier incurs a cost for exchanging traffic, recovery will have to be obtained from other sources. The IWC plan provides for end users to bear the cost of their connections to the network, except where specific public policies require the continuation of specific universal service subsidies in accordance with Section 254, as discussed in the IWC plan.[25]

V. THE INDEPENDENT WIRELESS CARRIER'S PROPOSED TRANSITION PERIOD SHOULD BE ADOPTED

Most of the commenting parties urge the Commission to phase in its new intercarrier compensation over a specified transition period. The IWC plan provides for a four-year transition period, with a limited IWC exception applicable for the smallest rural carriers, who would be subject to a six-year transition period. The IWC plan provides for "flash cut" to bill-and-keep at

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[24] *See* Corr Wireless Comments at 2-4; Leap Wireless Comments at 6; NCTA Comments at 3-4. IWC notes that CompTel/ALTS, which does not endorse a specific intercarrier compensation plan, also urges the Commission to eliminate such artificial distinctions. CompTel/ALTS Comments at 5-6.

[25] *See* NCTA Comments at 6-7 (recognizing that necessity of specific universal service subsidies related to rural carriers).

the end of the transition period.[26] ICW submits that the transition period is necessary to enable carriers to reconfigure their trunk connections, interconnection facilities, and billing systems, and to allow for a transition to carriers' ability to recover their economically justified costs from their end users. ICW disagrees with commenters who propose that the new intercarrier compensation regime be immediately implemented,[27] and notes that the three-year transition period suggested by CTIA might be insufficient to ensure that the important objectives necessitated by the transition are achieved. ICW therefore urges the Commission to find that its proposed transition period is appropriate.

VI. THE COMMISSION SHOULD FOLLOW THE INDEPENDENT WIRELESS CARRIER'S RECOMMENDATIONS WITH RESPECT TO TRANSIT SERVICE ISSUES

There is widespread support among commenters for ICW's position that incumbent LECs that operate tandem switches should be required to provide transit at cost-based rates to any carrier interconnected with that tandem (*i.e*, indirect interconnection).[28] Those commenters who disagree with this position, including Qwest, BellSouth, and SBC are incorrect because indirect interconnection is required by Sections 201(a) and 251(c) of the Act,[29] and is the most efficient means for competitive LECs and wireless providers to deploy networks and serve customers.[30]

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[26] *See* IWC Plan at 21.

[27] *See* Leap Wireless Comments at 11.

[28] *See* Cox Comments at 14, 21; CTIA Comments at 11; CompTel/ALTS Comments at 10; Leap Wireless Comments at 4.

[29] 47 U.S.C. § 201(a) (authorizing Commission to require carriers to establish through routes); 47 U.S.C. § 251(A)(1) (requiring both direct and indirect interconnection).

[30] Transit tandem functionality is a vital element for efficient exchange of traffic between carriers in rural areas. As noted in the comments of the Centralized Equal Access ("CEA") providers: "A single point of interconnection, traffic aggregation and the single source of network functionality provide efficiencies and cost savings for rural LECs, IXCs, and other carriers." CEA Providers' Comments at 4.

VII. THE INDEPENDENT WIRELESS CARRIER'S APPROACH TO CMRS ISSUES SHOULD BE ADOPTED

As IWC explained in its comments, the adoption of a nationwide bill-and-keep regime will make it unnecessary for the Commission to address the intraMTA rule and the CMRS rating issues described in the NPRM. If the Commission declines to adopt bill-and-keep, however, then it should retain the intraMTA rule in its present form for the reasons stated in IWC's comments. The purpose of the rule is to distinguish access traffic from Section 251(b)(5) CMRS traffic subject to reciprocal compensation.[31] The Commission should clarify that CMRS traffic that originates and terminates within an MTA – even traffic that is passed through a transiting carrier – is subject to reciprocal compensation rather than access charges. ICW agrees with Nextel Partner's position that application of the intraMTA rule makes sound policy sense, as it would be inequitable and anticompetitive to deny a local competitor access to reciprocal compensation for call termination.[32]

The Commission should also affirm that separate rating and routing for local numbers is fully consistent with the Act. IWC emphasized the importance of a local competitor being able to obtain telephone numbers in areas where it is licensed to provide service.[33] Several commenters pointed out problematic issues related to the fact that many rural telephone companies do not view local dialing parity as a statutory obligation, and instead deny local dialing parity as a means to gain leverage in carrier negotiations.[34] The Commission should prohibit such practices, and also prevent ILECs from the anticompetitive practice of improperly shifting the cost of

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[31] *See Further Notice*, ¶ 135.

[32] Nextel Partners Comments at 7.

[33] IWC Comments at 31-37.

[34] Dobson Cellular Systems Comments at 5-6; Nextel Partners Comments at 15.

facilities used to deliver the ILEC's traffic to their competitors based on claims that ILECs are permitted to shift such costs if calls must be transported beyond an exchange boundary.

VIII. THE INDEPENDENT WIRELESS CARRIER'S UNIVERSAL SERVICE PROPOSAL SHOULD BE ADOPTED

Virtually all commenters strongly urge the Commission to reform the existing universal service regime. With regard to IWC's comprehensive universal service reform plan, CTIA stated that "The Western Wireless Plan encourages all carriers to operate at their most efficient level, which will ultimately promote competition, decrease reliance on the universal service, and lower customer's costs."[35] IWC submits that its proposal best exemplifies the qualities of economic efficiency, competitive neutrality, and furtherance of the public interest, and believes that it should be adopted as superior to other plans before the Commission. IWC submits that the time is ripe to link economic efficiency and universal service principles together. Universal Service should not be viewed as a revenue guarantor for eligible telecommunication carriers' ("ETCs") networks.

The substantial attention devoted to universal service reform by the commenting parties underscores its importance as one of the most critical issues facing the Commission in this proceeding. As IWC explained at length in its comments, the Commission's universal service plan should neither focus on nor guarantee revenue neutrality for ILECs.[36] The Commission should not seriously consider any proposal (such as the ICF, EPG, ARIC/FACTS and Home/PBT plans) that seek to protect ILEC investments or permit the recovery of increased

[35] CTIA Comments at 53.

[36] IWC Comments at 38, 40, 44-46.

universal service subsidies in order to replace lost ILEC revenue.[37] Any such action would be plainly inconsistent with the Commission's public interest and competition advancement goals.

In addition, the Commission's universal service reform plan should be forward-looking, consistent, and based on lowest-cost technology. The IWC plan calls for establishment of a unified system that would provide funding to all carriers serving rural areas based on a consistent methodology described in IWC's comments. Once an analytical methodology is in place to determine the appropriate forward-looking costs, specific support amounts for each geographic unit would be derived based on a simple comparison of the cost of service in each area with a national benchmark. The IWC plan provides for additional funding to the highest-cost states that have the least ability to generate needed interstate funding, thereby ensuring that the most rural areas are eligible for federal universal service funding. The IWC proposal thereby advances the public interest and it should be adopted by the Commission.

IX. CONCLUSION

The IWC plan offers the Commission a comprehensive, specific, yet not overly complex intercarrier compensation reform plan that is consistent with the goals expressed by the Commission. Because it eliminates arbitrary distinctions in compensation and traffic exchange, the IWC proposal is both technology and carrier agnostic. The plan accounts for necessary modifications to related regulatory programs, such as universal service, and includes comprehensive provisions in those areas. IWC requests that its plan be adopted as superior to the other plans before the Commission in this proceeding, as the IWC plan best meets the addresses

[37] CTIA Comments at 31; Dobson Wireless Comments at 9; Leap Wireless Comments at 4, 15. The IWC plan appropriately provides for a more gradual, six-year transition period for the smallest rural ILECs (i.e., those that, together with all wireline affiliates, serve fewer than 30,000 lines in a state and fewer than 100,000 nationwide) than the otherwise applicable four-year transition period.

all of the objectives announced by the Commission in connection with intercarrier compensation reform.

Respectfully submitted,

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